

Authorization: Dean Uchida, Director
Advertisement: August 20, 2021
Public Hearing: September 1, 2021

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August 13, 2021

MEMORANDUM

TO: Brian Lee, Chair
and Members of the Planning Commission

FROM: Dean Uchida, Director
Department of Planning and Permitting

SUBJECT: Proposed Amendments to Chapter 21 (Land Use Ordinance [LUO]),
Revised Ordinances of Honolulu (ROH) 1990, as Amended, Relating to
Transient Accommodations

A handwritten signature in black ink, appearing to read "Uchida", is written over the "FROM" line.

Digitally signed by
Uchida, Dean
Date: 2021.08.13
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The Department of Planning and Permitting (DPP) is pleased to submit for your review and appropriate action the Department's report and draft bill proposing amendments relating to Transient Accommodations.

The proposal would amend specific sections of the ROH (Chapters 8 and 21) relating to transient vacation units (TVU), bed and breakfast (B&B) homes, and hotels as summarized below:

1. Chapter 8, Real Property Tax, ROH
 - B&B properties, including B&Bs with nonconforming use certificates, will be placed in the B&B Home tax category.
 - TVU properties, including TVUs with nonconforming use certificates, will be placed in the Hotel and Resort tax category.
2. Chapter 21, LUO, ROH
 - Administrative enforcement procedures have been updated.
 - Up to \$3,125,000.00 in real property taxes collected relating to TVUs and B&Bs will be deposited into a special account to be used by DPP for the enforcement of TVUs and B&Bs.
 - Application, registration, renewal and revocation processes for B&Bs and TVUs have been updated.

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- Amendments to the Master Use Table would eliminate B&Bs and TVUs as a permitted use in every land use category except for certain areas in the A-1 and A-2 apartment districts located in or near existing resorts.
- Amendments to the Master Use Table would allow hotels, condominium hotels and hotel units in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.
- Development standards and definition for hotels have been updated.
- Development standards for B&Bs and TVUs have been updated.
- Definition of B&Bs and TVUs have been updated to a minimum duration of less than 180 consecutive days.
- Definition and requirements for advertisement have been updated.

Attached you will find our staff report and draft bill for your consideration. We will be happy to answer any questions that you may have concerning this matter during the Public Hearing.

Attachments

**ADMINISTRATION INITIATED LAND USE ORDINANCE AMENDMENTS
RELATING TO SHORT-TERM RENTALS AND TRANSIENT ACCOMMODATIONS,
POST COVID-19**

Staff Report

August 13, 2021

I. BACKGROUND

On June 25, 2019, Mayor Kirk Caldwell signed into law Ordinance 19-18 (Bill No. 89, 2018, CD2) Relating to Short-Term Rentals (STR), which would in part allow more bed and breakfast homes (B&Bs) throughout the Island, including residential neighborhoods. Prior to full implementation of Ordinance 19-18, the City along with the rest of the world was disrupted by the shut-down of normal day-to-day activities due to the worldwide Covid-19 pandemic.

Neighborhoods began to see what life was like before the proliferation of STRs throughout their neighborhoods. Traffic, crowding, tourists invading residential neighborhoods, and noise at all hours of the day that were typical issues created in part by STRs, disappeared during the pandemic lock down.

In addition, residents across the state realized what life was like before millions of visitors started coming to Hawaii. No or very little traffic, wide open beaches and trails, and less people in general were “benefits” of the shut-down. While the visitor industry is a main driver of Hawaii’s economy, discussions have begun on how we might limit the number of visitors to Hawaii. Ten million (10,000,000) visitors annually has become too much.

The pandemic caused us to take a closer look at Ordinance 19-18, which would allow a limited number of new B&Bs and require compliance with registration requirements, development standards, and other regulations. However, some of the provisions in Ordinance 19-18 would be impractical to implement and have resulted in enforcement problems. To address these issues, we believe it is necessary to improve upon Ordinance 19-18 by simplifying the City’s approach to regulating STRs and other transient accommodations.

STRs are disruptive to the character and fabric of our residential neighborhoods. They are inconsistent with the land uses that are intended for our residential zoned areas, they decrease the supply of long-term housing for local residents throughout the City, and increase the prices and rents of housing, making living on Oahu less affordable for its resident population. Any economic benefits of opening-up our residential areas to tourism are far outweighed by the negative impacts on our neighborhoods and local residents.

The purpose of this Ordinance is to better protect the City's residential neighborhoods and housing stock from the negative impacts of STRs by providing a more comprehensive and controlled approach to the regulation of STRs within the City and creating additional sources of funding for the administration and enforcement of the City's B&B and transient vacation unit (TVU) laws.

II. ANALYSIS

The proposed amendments are essentially a "policy pivot" to redirect the STR Ordinance in a different direction. The two overall goals of this policy pivot are to:

1. Reduce impacts on residential neighborhoods; and
2. Regulate STRs that are permitted only in or adjacent to existing resort areas.

In order to accomplish these goals, the amendments to the ordinance will do the following:

- Provide greater enforcement tools over illegal and non-compliant STRs.
- All existing non-conforming B&Bs and TVUs will continue, provided the units are registered, pursuant to the Ordinance.
- No new B&Bs and TVUs will be allowed or permitted in Residential Zoned areas.
- New B&Bs and TVUs will only be allowed in areas adjacent to and associated with existing Resort zoned property, specifically in the A-2 medium-density apartment zoning district located in the Gold Coast area of the Diamond Head Special district and in the A-1 low-density and A-2 medium density apartment zoning districts located adjacent to the Ko'Oline and Kuilima resort areas.
- All STRs will be required to include their certificate of registration number or their nonconforming use certificate number in all advertisements; any advertisement of a property for use as a B&B or TVU without such registration number is a violation.
- Hotels, condominium hotels and hotel units will be newly defined and added as a permitted use subject to development conditions in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.
- All registered existing non-conforming and newly permitted TVUs are to be assessed at the hotel and resort rate for real property tax purposes.

- All registered existing non-conforming and newly permitted B&Bs are to be assessed at the B&Bt home rate for real property tax purposes; consistent with the requirement that the owner of the B&B must live at the B&B, all B&Bs owners must obtain the home exemption for real property tax.
- All new B&Bs and TVUs must have and keep current general excise and transient accommodations tax licenses, and must maintain a minimum of \$1,000,000.00 in commercial general liability insurance at all times, for their unit.
- The current update of the Primary Urban Center will allow for Resort Zoning for individual properties located along the “Gold Coast of Waikiki,”--the area makai of Kapiolani Park -- so that owners in this area will be able to up-zone their property to the resort district.
- Provide annually to the Department up to \$3,125,000.00 in real property taxes from registered B&Bs for the purposes of funding enforcement of STRs.
- The definitions of “bed and breakfast home” and “transient vacation unit” are amended to increase the rental period for TVUs or B&Bs from less than 30 days to less than 180 days.
- The Department of Planning and Permitting’s (DPP) violation enforcement procedures have been overhauled in order to better equip DPP’s inspectors to investigate and enforce violations of the Land Use Ordinance, including the provisions related to STRs.

III. RECOMMENDATION

Amendments to the different Chapters of the Revised Ordinances of Honolulu (ROH), based on Ordinance 19-18, will be as follows by Chapter:

A. Amendments to ROH Chapter 8 Real Property Tax

Changes to the ROH Chapter 8 will place B&Bs and TVUs into the appropriate real property tax category. B&B properties, including B&Bs with nonconforming use certificates, will be placed in the B&B home tax category. TVU properties, including TVUs with nonconforming use certificates, will be placed in the Hotel and Resort real property tax category, as they are operating similar to hotels/resorts.

B. Amendments to ROH Chapter 21 administrative enforcement, depository of fees, civil penalties and real property taxes collected relating to B&B homes or STRs.

Administrative enforcement tools are created and amended to better enforce land use regulations including: making owners, persons in possession or control of the premises,

and persons who cause, contribute to, or benefit from a violation liable, and potentially joint and severally liable, for such violation; clarifies service of process for violations, orders, and appeals; increase fines up to \$25,000 per violation and \$25,000 per day for each day a violation remains uncorrected; requires the violator to send a written notification to the director reporting the correction of the violation when cured; authorizes the director to enter into consent orders and issue orders to show cause to ensure compliance by violators; and creates additional daily fines in an amount up to the highest daily rate at which a B&B or TVU has been advertised or offered for rent.

Directs up to \$3,125,000.00 collected in real property taxes by the City for the B&B tax classification to be deposited annually into a special account of the general fund to be used by the DPP to fund expenses relating to establishing a new STR Enforcement Branch within DPP.

Amendments to the Master Use Table would eliminate B&Bs and TVUs as a permitted use in every land use category except for certain areas in the A-1 and A-2 apartment districts located in or near existing resorts. Areas where new B&B and TVU operations are permitted are identified as follows:

1. A-1/A-2 apartment zoning district near Kuilima Resort, as shown on Exhibit A to the draft ordinance;
2. A-1/A-2 apartment zoning district near Ko'Olina Resort, as shown on Exhibit B to the draft ordinance; and
3. A-2 medium-density apartment zoning district located at the Gold Coast in the Diamond Head special district (provided the individual parcels request rezoning to Resort).

Amendments to the Master Use Table would allow hotels, condominium hotels and hotel units in the Apartment Precinct and Apartment Mixed Use Precinct of Waikiki.

Hotels and hotel unit development standards are defined, including that hotel units may not be used as B&Bs or TVUs and must be booked by guests through a centralized hotel booking system, and rental rates must be determined by the hotel operator or manager of the hotel's centralized booking service. Hotels and hotel units that have existing certificates of occupancy for hotels uses shall comply with the development standards. Units in a condominium-hotel must be part of the hotel's room inventory, available for rent to the general public, and the use of a condominium-hotel unit as a primary residence or usual place of abode is not allowed.

Use and development standards are established for B&Bs and TVUs, including occupancy limits and sleeping arrangements, onsite parking requirements, noise restrictions and quiet hours, current tax licensing, insurance coverage, restrictions on gatherings, and an informational binder to provide guests guidance on being respectful of neighbors and information to help guests respond appropriately to emergencies.

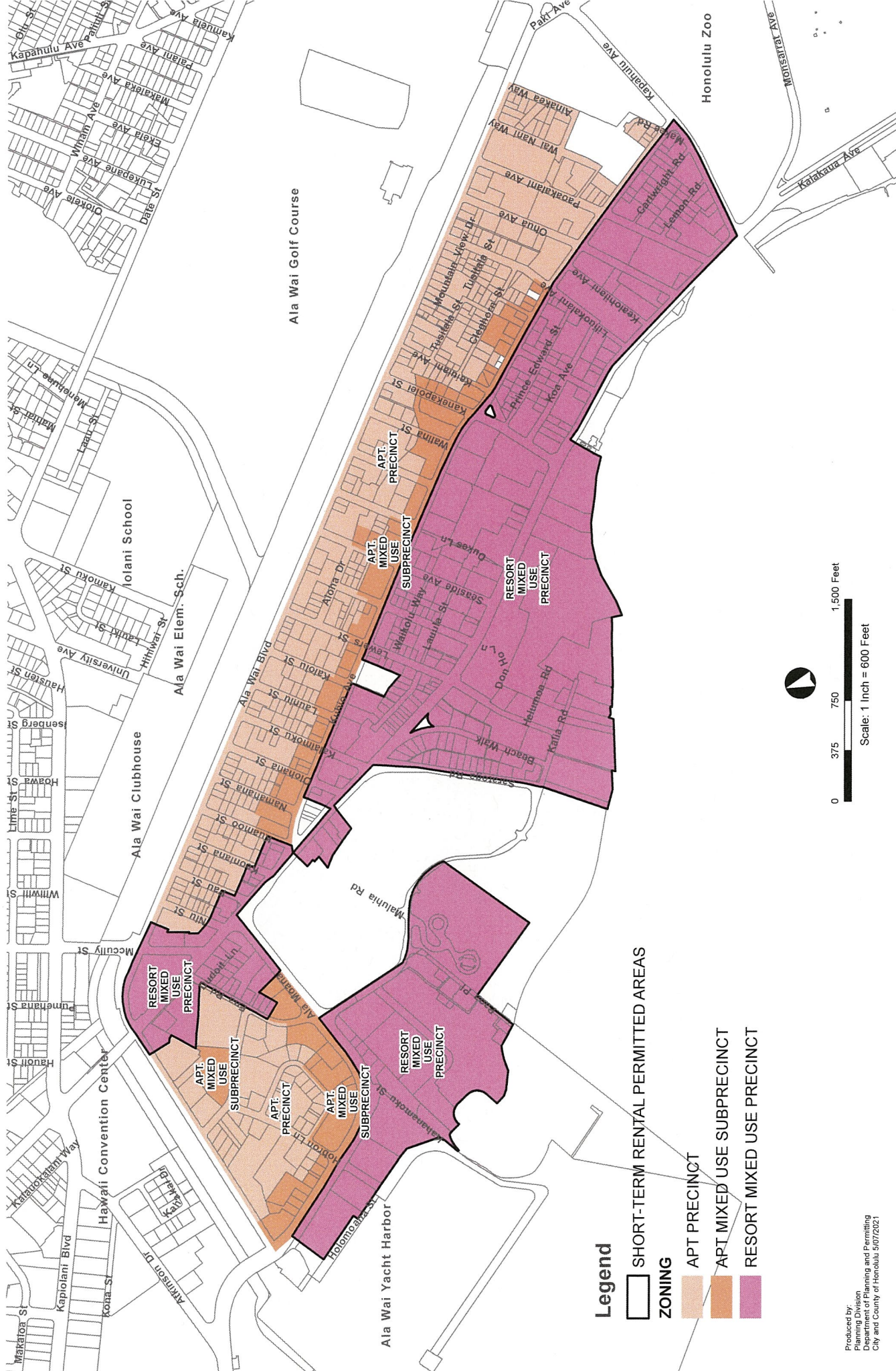
Amendments provide application, registration, renewal and revocation processes for B&Bs and TVUs.

Advertisements must contain the lawful registration number and tax map key number of the TVU or B&B unit. It is unlawful for any person to advertise or cause the advertisement of a dwelling unit that is not a registered B&Bs and TVUs for a term of less than 180 days.

The amendments include a process for the public to submit written complaints regarding any suspected violation of the ordinance along with how the DPP will respond and follow up on the complaint.

IV. CONCLUSION

The Department of Planning and Permitting believes that this ordinance responds to the community needs that have shifted significantly under the pandemic. It takes into account the concerns of residential neighborhoods, as well as the visitor industry, and should result in more long-term housing stock being made available for residents by eliminating and prohibiting short-term rentals (STR). Finally, it provides better enforcement tools to address illegal STRs and an independent source of revenue to support the necessary enforcement actions to rein in illegal STRs on Oahu.



Legend

- SHORT-TERM RENTAL PERMITTED AREAS
- ZONING**
 - APT PRECINCT
 - APT MIXED USE SUBPRECINCT
 - RESORT MIXED USE PRECINCT

